

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BEN DANIEL WILLIAMS,	§	
	§	
VS.	§	CIVIL ACTION NO.4:12-CV-926-Y
	§	
WILLIAM STEPHENS,	§	
Director, T.D.C.J.	§	
Correctional Institutions Div.	§	

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS
AND ORDER DENYING CERTIFICATE OF APPEALABILITY

In this action brought by petitioner Ben Daniel Williams under 28 U.S.C. § 2254, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on August 20, 2013; and
3. The petitioner's written objections to the proposed findings, conclusions, and recommendation of the United States magistrate judge filed on September 9, 2013.¹

The Court, after **de novo** review, concludes that Petitioner's objections must be overruled, and that the petition for writ of habeas corpus should be denied for the reasons stated in the magistrate judge's findings and conclusions.

Therefore, the findings, conclusions, and recommendation of the magistrate judge are ADOPTED.

¹Petitioner Williams also filed, on September 9, 2013, an interlocutory appeal from the magistrate judge's report. By the December 10, 2013 order of the United States Court of Appeals for the Fifth Circuit in case number 13-10976, that appeal was dismissed for lack of jurisdiction, and the judgment issued as mandate recorded on the docket of this Court on December 27, 2013.

Ben Daniel Williams's petition for writ of habeas corpus under 28 U.S.C. § 2254 is DENIED.

Certificate of Appealability

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253.² Rule 11 of the Rules Governing Section 2254 Proceedings now requires that the Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."³ The COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right."⁴ A petitioner satisfies this standard by showing "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further."⁵

Upon review and consideration of the record in the above-referenced case as to whether petitioner Williams has made a showing that reasonable jurists would question this Court's rulings, the Court determines he has not and that a certificate of appealability should not issue for the reasons stated in the August 20, 2013 Findings, Conclusions, and Recommendation of the United States Magistrate Judge.⁶

²See Fed. R. App. P. 22(b).

³RULES GOVERNING SECTION 2254 PROCEEDINGS IN THE UNITED STATES DISTRICT COURTS, RULE 11(a) (December 1, 2009).

⁴28 U.S.C.A. § 2253(c)(2)(West 2006).

⁵*Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003)(citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

⁶Fed. R. App. P. 22(b); see also 28 U.S.C.A. § 2253(c)(2)(West 2006).

Therefore, a certificate of appealability should not issue.

SIGNED January 2, 2014.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE